

**REMARKS**

The Examiner's careful review and examination of the subject application are noted and appreciated. Further, the Examiner's indication of allowable subject matter is noted and appreciated. Further, Applicants have added new claims 51 and 52. No new matter is introduced as the new claims are based on limitations present in cancelled original claims 1, 19, and 20. Entry of the amendment is respectfully requested.

**Claim Rejections – Nonstatutory Double Patenting**

The Examiner has rejected claims 33, 37-46 and 48-49, based on nonobvious-type double patenting over claims 1, 3, 7, 9, 11, 15, 17, 21, 22, and 23 of U.S. Patent No. 6,830,725. However, claim 33 requires a maximum concentration difference of less than 0.25 wt. % absorbed hydrogen, which is not present in the cited claims. Applicants, by testing material B12 of the '725 disclosure have determined that the genus of alloys present in the '725 disclosure includes materials having a maximum concentration difference of .33 wt. % and less. Applicants, however, have made a substantial improvement in achieving a maximum concentration difference of 0.25 wt. % or less and thus are claiming a new species which was not taught or clearly envisioned by the prior art.

Applicants respectfully submit that a material having a maximum concentration difference of less than 0.25 wt. % absorbed hydrogen is nonobvious over the material described claimed in "the '725 patent.

In the present description, Applicants describe testing the maximum concentration difference of material B12 (see page 9, paragraph 87) B12 has the

same composition as material described in the '725 patent (see column 6, line 5). B12 has an MCD of greater than .33 (see table at paragraph 127), which is higher than the MCD required by Applicant's claim 1. Thus, a hydrogen storage element having a MCD of less than .33 is not taught by the '725 patent.

The PTO has failed to demonstrate that the '725 reference teaches each and every limitation of Applicants' claim 33 and all claims dependant thereon. In fact, Applicants demonstrate in their specification that every element of Applicants' claim 33 and all claims dependant thereon are not taught in U.S. Patent Number 6,830,725. Therefore, Applicants submit that claim 33 has patentably distinct subject matter from the claims cited in the '725 patent. Thus, removal of the obviousness-type double patenting rejection is respectfully requested.

**Rejection of claims 1-7, 12-23, and 28-30 under 102(b) over Willem et al (U.S. Patent No. 4,487,817)**

Claims 1 and 28 have been cancelled. All claims now depend on claim 33, which Applicants' representative submits is allowable as discussed above. Therefore, the rejection is moot in light of the present amendment. Thus, removal of the rejection is respectfully requested.

**Rejection of claims 1, 2, 11, 12-23, and 28-31 under 35 USC 102(b) over United States Patent 5,512,135 (Komori)**

Claims 1 and 28 have been cancelled. All claims now depend on claim 33, which Applicants' representative submits is allowable as discussed above. Therefore, the

rejection is moot in light of the present amendment. Thus, removal of the rejection is respectfully requested.

**Rejection of claims 8-11, 24-27, 31-32 under 103(a) over Willem et al (U.S. Patent No. 4,487,817)**

Claims 1 and 24 have been cancelled. All claims now depend on claim 33, which Applicants' representative submits is allowable as discussed above. Therefore, the rejection is moot in light of the present amendment. Thus, removal of the rejection is respectfully requested.

**Rejection of claims 34-36 and 47 under 103(a) over Willem et al (U.S. Patent No. 4,487,817)**

Applicant appreciates the Examiner indicating allowable subject matter. However, as discussed above, Applicant respectfully submits that claim 33 is allowable in light of the cited references. Thus, removal of the rejection is respectfully requested.

Applicants respectfully request withdrawal of all outstanding rejections and respectfully submit that the application stands in condition for allowance. If the Examiner has any questions or suggestions regarding this amendment, the Examiner is respectfully asked to contact Applicants' representative at the telephone number or email address listed below.

Respectfully submitted,



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